

- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). The limitations period is tolled during the pendency of a properly filed state post-conviction action. § 2244(d)(2).

Absent any other information from Petitioner, it appears that his § 2254 habeas petition is untimely under § 2244(d)(1)(A). Judgment was entered on April 19, 2005, when Petitioner was sentenced. Petitioner then had 14 days to file a notice of appeal in the North Carolina Court of Appeals. See N.C. R. App. P. 4(a)(2). As noted, Petitioner does not indicate in his habeas petition whether he sought any type of review – direct or discretionary – in the appellate courts. If Petitioner did not seek review, his conviction became final on May 3, 2005, when the time for seeking direct review expired. See § 2244(d)(1)(A).

As also noted, Petitioner does not indicate whether he sought post-conviction relief by way of a Motion for Appropriate Relief in the Superior Court of Cleveland County. If he did not seek post-conviction relief, the federal statute of limitations ran for 365 days from the date on which his conviction became final until it fully expired on or about May 3, 2006.

Petitioner has not addressed the timeliness issue in his habeas petition. Therefore, the Court will provide Petitioner 20 days to explain why the instant § 2254 habeas petition should not be dismissed as untimely, including any reasons why equitable tolling should apply. See Hill v. Braxton, 277 F.3d 701, 706 (4th Cir. 2002).

IT IS, THEREFORE, ORDERED that Petitioner shall, within 20 days from service of this Order, file a document explaining why his § 2254 Petition for Writ of Habeas Corpus should not be dismissed as untimely. If Petitioner does not file such explanation within 20 days from service of this Order, the petition may be dismissed without further notice.

Signed: March 31, 2015

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

